Aboriginal Affairs and Northern Development Canada
Affaires autochtones et Développement du Nord Canada

GUIDELINES

FOR UNCONSOLIDATED NON-METALLIC SUBSTANCES ON RESERVE LAND

(SAND AND GRAVEL)

MARCH 2014

Canada

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Lehigh Sechelt Pit
http://thewatermark.ca/?portfolio=trail-bay-port-where-the-sand-meets-the-sea

PREAMBLE

The Unconsolidated Non-Metallic Substances Guideline for Reserve Land was developed in response to a request from AANDC's regional offices in 2010. Subsequently, a Region-Headquarter Working Group was established and engaged for reviews, communications and consultations. The Department of Justice and the Northern Affairs Organization were also consulted and recommended the document for approval.

The intention of this guideline is to improve, accelerate, clarify and harmonise with provincial regimes the process of issuing permits and leases for unconsolidated non-metallic substances projects on reserve (typically sand and gravel) to maximize potential economic development and environmental benefits for First Nations. It will also ensure consistency of use and application of policy across regions.

1. INTRODUCTION

This document presents a set of guidelines to support the administration and management of unconsolidated non-metallic substances on First Nations reserves in Canada. It is not intended to apply to First Nations under the *First Nations Land Management Act*. It supplements and supports the "Operational Policy on the taking, disposition, and removal of non-metallic substances from reserves" dated November 1, 2000 (Appendix B). It provides Aboriginal Affairs and Northern Development Canada (AANDC) regional offices with information and guidance related to this type of activity. This guideline is also useful to First Nations, their consultants and to resource developers in preparing their permit/lease application.

AANDC, in cooperation with First Nation Councils, is responsible for the administration and management of non-renewable mineral resources on First Nation reserves in accordance with the *Indian Act*. Section 93 of the *Indian Act* states that it is unlawful to remove any or all minerals from a reserve, including unconsolidated non-metallic substances, without explicit consent of the First Nation Council and written permission of the Minister of AANDC or the Minister's representative. AANDC regional offices provide guidance on applications for disposals and operational issues relating to mineral disposition on First Nation reserve land.

1.1. Definition

"Unconsolidated non-metallic substances" are defined as minerals located at or near the surface which may be removed by an open excavation that does not involve quarrying of hard rock or blasting. It includes sand, gravel, stone, fill material, clay used as fill material, earth, ash, marl, top soil and peat.

The mineral resources not included in this definition are:

a) consolidated minerals extracted and disposed of under Section 58(4)(b) or Section 53(1) of the *Indian Act* (e.g., potash);
b) unconsolidated minerals not defined above;
c) minerals obtained from metallic placer deposits; and,
d) oil, gas, bitumen, petroliferous minerals, coal, lignite, metallic minerals, metallic placer deposits and all other minerals included in and administered in accordance with the *Indian Mining Regulations* or the *Indian Oil and Gas Act and Regulations*.

Unconsolidated non-metallic substances are considered a capital asset and represent economic development opportunities for First Nations. Many reserves throughout Canada possess large volumes of such material in commercial quantities and in excess of their present and future local needs.

Several of these resources are used extensively on roads in asphalt and as a road base, and as components of concrete in the building and housing industry. Parties

interested in accessing these resources must do so in consultation with First Nations and AANDC to arrange for permits or leases for removal of materials from reserve lands in accordance with the *Indian Act* and to provide fair equitable compensation to the affected First Nation in the form of rental fees and/or royalty monies. These compensatory monies are accrued to their revenue and capital trust accounts respectively.

2. DEPOSIT SIZE

Unconsolidated non-metallic substance deposits, commonly composed of sand and gravel material, can be measured by volume (e.g., in cubic metres, m^3) or by weight (e.g., in metric tonnes, t). Deposit size should be reported by volume when possible, for consistency and can be estimated by multiplying its length, width and depth. The volume can vary in size from a few thousand cubic metres to several million cubic metres. To be of any commercial value however, the volume in the deposit would normally exceed 1,000,000 m^3.

The following guide for development consideration uses high quality sand and gravel as an example and assumes nearby market accessibility. In order to better visualize the surface footprint of a sand and gravel operation, deposit volumes can be used to estimate the approximate affected surface area (indicated in hectares, below).

- Under 10,000 m^3 or an area under 1 Ha: These small deposits would be useful for a community's road maintenance and local use.

- 10,000 to 100,000 m^3 or an area of 1 Ha to 5 Ha: A deposit of this size is sufficient for approximately 10 kilometres of basic road construction as well as routine road improvement and maintenance for several years. This size of deposit is however considered to be insufficiently large to sustain a viable commercial development, except perhaps on a one-time basis.

- 100,000 to 1,000,000 m^3 or an area of 5 Ha to 30 Ha: This size deposit would provide substantial sand and gravel for a major road construction project, a long-term source for road improvement and maintenance, or a small commercial operation with an estimated life span of up to 10 years.

- More than 1,000,000 m^3 or an area greater than 30 Ha: This size deposit could possibly sustain a major commercial development with an estimated average annual extraction of 50,000 to 250,000 m^3 and an estimated lifespan of over 10 years.

Table 1. Deposit size classification and potential use (sand and gravel).

Volume of deposit (m^3)	Suggested uses	Life span (years)	Scale of development project	Affected area (hectares)
1,000 - 10,000	First Nation use	1 - 3	Small road maintenance	<1
10,000 - 100,000	First Nation or commercial use	1 - 5	10 km of basic road construction	1 - 5
100,000 - 1,000,000	Commercial use	5 - 10	Major road construction project, small commercial	5 - 30
1,000,000+	Commercial use	10+	Major commercial development	>30

3. ROLES AND RESPONSIBILITIES

The major participants in on-reserve unconsolidated non-metallic substances development are the proponent, the permittee/lessee, the First Nation and AANDC. In some cases, the proponent and permittee/lessee may in fact be the same person or company. In other cases, the proponent and permittee/lessee may be separate parties.

3.1. Proponent

The proponent's responsibilities include, but are not limited to:

- exploration for the unconsolidated non-metallic substances (demonstrating that the amount, type, and quality of material desired is present);
- verifying that proposed project complies with the First Nation's zoning and land use by-laws for that area;
- providing a survey plan (legal description), sketch and/or a textual description of the permit/lease area, which also identifies roads to be used for access (refer to Indian Lands Registration Manual, July 2013 for standard requirements);
- providing AANDC and the First Nations with the documentation needed in support of the application such as: Project Description, Operational and Restoration Plan, environmental information for the proposed activities in the subject area;
- obtaining and complying with all required regulatory approvals and the right to extract and sell the resource (e.g. see Appendix C);
- addressing and resolving any outstanding concerns raised by AANDC's Environmental Review Process which is carried out pursuant to s. 67 of the *Canadian Environmental Assessment Act, 2012* (CEAA, 2012) with respect to the proposed project;
- financing the project;
- complying with other applicable federal legislation (see Appendix C for examples of relevant legislation);

- developing and operating the pit or quarry; and,
- finding markets.

3.2. Permittee/Lessee

The permittee/lessee's responsibilities include, but are not limited to:

- applying for and obtaining all required permits and licences for the project, refer to Section 4.0 Non-metallic mineral Disposition of the present guideline;
- providing a geotechnical report including topographical and geological surveys of the permit/lease area prior to the removal of any material;
- addressing and resolving any information gaps and/or outstanding concerns raised by AANDC's Environmental Review Process with respect to the proposed project;
- compliance with terms and conditions of permit/lease, and posting securities for performance of restoration obligations;
- submitting a statutory declaration certifying the total volume of material removed from the permit/lease area and royalty payments reconciliation;
- complying with other federal legislation (see Appendix F for examples of relevant legislation);
- finding markets for the unconsolidated non-metallic substances;
- developing and operating the pit or quarry;
- arranging for a professional engineer, a geologist or a person with requisite experience & qualifications, to supervise project activities for compliance with permit/lease; and,
- restoring the site to the conditions specified by the permit/lease.

3.3. First Nation

The First Nation's responsibilities include, but are not limited to:

- consulting with its community members, in accordance with the "Operational Policy on the taking, disposition, and removal of non-metallic substances from reserves" effective November 1, 2000 to ensure that they have all available information before making a decision on the proposed development;
- identifying an area for development, consistent with the community's land-use requirements and zoning by-laws;
- negotiating suitable terms and conditions with the developer;
- ensuring that its community members have all available information to make a decision on the proposed development;
- conducting a vote, as required under the "Operational Policy on the taking, disposition, and removal of non-metallic substances from reserves" effective November 1, 2000";
- referring the proponent to AANDC for information on AANDC's requirements regarding unconsolidated non-metallic substances permits/leases;

- where applicable, th
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area;
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3.4. AANDC

AANDC's responsibilities i
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4. NON-METALLIC MINE RAL DISPOSITION

The exploration, extraction or mining of minerals from reserve lands and commission of them to some other use is referred to as "disposition". In order to initiate development

There are two disposition options, permit or lease, both of which require the consent of the First Nation. To obtain consent of the Band Council [illegible] granting a permit or lease.

AANDC uses, in general, two sections of the *Indian Act* in the disposition of unconsolidated non-metallic substances:

- subsection 58(4)(b) permit
- subsection 53(1) lease or permit

Permits and leases for the disposition of unconsolidated non-metallic substances can be issued under various circumstances depending, generally, on the size of the deposit and the quantity of the material to be extracted. As a general rule permits are issued for projects of a shorter duration for smaller quantities of minerals. On the other hand, a lease is required in situations where the operations are taking place over longer periods of time; where there are large deposits and quantities to be extracted; and the proponent is seeking exclusive access to the land. Construction of permanent buildings is an example of when a lease is needed. Refer to Table 2 for further details.

Depending on the case complexity and particularities other sections of the *Indian Act* may apply. Refer to information below.

4.1 Policy and Regulatory Management

The "Operational Policy on the taking, disposition, and removal of non-metallic substances from reserves" dated November 1, 2000 (Appendix B) states the following:

- A subsection 58(4)(b) permit cannot be issued for reserve lands which have been [illegible]
- Where a person seeks to take non-metallic substances from an Indian Reserve in which the cumulative volume of all deposits is estimated to be less than 100,000 cubic metres (excluding overburden), AANDC may issue a subsection 58(4)(b) permit with the consent of the Band Council.
- Where a person seeks to take non-metallic substances from an Indian reserve in which the cumulative volume of all deposits is estimated to be in excess of 100,000 cubic metres (excluding overburden) thereby potentially causing a significant and permanent loss of, or diminished use of the surface of the reserve, AANDC will consult with the Band Council whether it wishes to proceed through a subsection 58(4)(b) permit or through a designation process.
- Where the Band Council chooses to proceed by way of a subsection 58(4)(b) permit, AANDC may issue such permit where (i) the Band Council and (ii) the majority of on and off-reserve electors of the First Nation, at a general meeting receiving independent legal and professional advice have consented to the project.

Subsection 58(4)(b) permits may authorize the permittee to acquire non-exclusive interests in the land that are compatible with those granted to the permittee. For example, a permittee may require access to the permit area for the purpose of constructing and maintaining a road. The permittee may also require access to the permit area for the purpose of conducting activities that are related to the permittee's operations, such as industrial or educational tours, etc.). These interests shall be explicitly specified in the terms and conditions of the permit and be consented by the BCR.

Subsection 28(2) of the *Indian Act* identifies specific provisions in the context of unconsolidated non-metallic substances development granting to the permittee the right to use and occupy the permit area for all purposes necessary or reasonably incidental to the exercise of the right to extract, store and remove unconsolidated non-metallic substances. It may be used in combination with subsection 58(4)(b).

In situations where the taking of non-metallic substances from reserve lands is to occur on designated lands, the designation must have provisions enabling such rights and consistent with the primary scope of the designation.

Where an instrument issued under subsections 58(4)(b), 53(1) of the *Indian Act* authorizes the taking and disposition of non-metallic substances from a reserve, the instrument should include explicit authorization to the permittee/lessee and persons acting for or on behalf of the permittee/lessee, to remove those substances from the reserve from which they were taken.

An unconsolidated non metallic substances permit cannot be issued under the *Indian Mining Regulations* because the unconsolidated non metallic substances are not defined as a "mineral" under those regulations.

Table 2 below shows the essential mineral disposition authorities for unconsolidated non metallic substances.

Table 2: Essential Mineral Disposition Authorities for Unconsolidated Non-Metallic Substances

Situation	Grant authority to use surface to explore and remove samples (only)	Grant authority to remove minerals	Grant authority to dispose of minerals	Grant authority to use land for a quarry, pit, mine	Comments
1. Mineral deposit size < 100,000 cu.m. (no designation required for land and minerals)					
A. Band Land					
Mining by FN Council for FN use	No authority required, subject to prior encumbrances	No authority required if for the benefit of the entire membership	No authority required if for the benefit of the entire membership	No authority required if for the benefit of the entire membership	If does not benefit the entire membership ss. 58(4)(b) permit required
Mining by FN Council for sale	No authority required, subject to prior encumbrances	ss. 58(4)(b) permit	ss. 58(4)(b) permit	ss. 58(4)(b) permit	BCR required in all instances
Mining by third party (including FN Corporation) for sale	ss. 28(2) permit (no authority to remove minerals)	ss. 58(4)(b) permit	ss. 58(4)(b) permit	ss. 28(2) with ss. 58(4)(b) permit where no major or permanent disruption of the land or permanent buildings	BCR required in all instances
B. CP Land					
Mining by FN Council for FN use	No authority granted	ss. 58(4)(b) permit	ss. 58(4)(b) permit	No authority granted	BCR and CP approval required where authority

Situation	Grant authority to use surface to explore and remove samples (only)	Grant authority to remove minerals	Grant authority to dispose of minerals	Grant authority to use land for a quarry, pit, mine	Comments
					granted Mineral disposition proceeds shared by FN and CP holder
Mining by FN Council for sale	No authority granted	ss. 58(4)(b)	ss.58(4)(b)	ss.58(4)(b)	BCR and CP approval required where authority granted Mineral disposition proceeds shared by FN and CP holder
Mining by third party, including FN Corporation for sale	ss.28(2) permit	ss. 58(4)(b)	ss. 58(4)(b)	ss.58(3) lease	BCR and CP approval required in all instances. Mineral disposition proceeds shared by FN and CP holder
Mining by CP holder	No authority required	ss. 58(4)(b)	ss. 58(4)(b)	ss. 58(4)(b)	BCR required except for exploration Mineral disposition proceeds shared by FN and CP holder

Situation	Grant authority to use surface to explore and remove samples (only)	Grant authority to remove minerals	Grant authority to dispose of minerals	Grant authority to use land for a quarry, pit, mine	Comments
2. Mineral deposit size > 100,000 cu.m.					
A. Designated lands and minerals					
Mining by any party (an individual, a FN Corporation, a third party, a legal entity)	ss. 53(1) lease or ss. 53(1)(b) permit	ss. 53(1) lease, where exclusive rights granted; ss.53(1)(b) permit where non-exclusive rights granted	ss. 53(1) lease, where exclusive rights granted; ss.53(1)(b) permit where non-exclusive rights granted	ss. 53(1) lease, exclusive rights granted,	For large projects, major disruptions to community, AANDC could use s. 18(2) to expropriate the CP holder, with BCR, and subject to compensation Leases and permits are subject to terms of the designation Exclusive rights = Where major disruption of the surface area or permanent buildings
B. Non-Designated lands and minerals					
Mining by any party (an individual, a FN Corporation	Follow the rules mentioned on part 1 A and 1 B of this table				Community general information meeting convened by the FN

Situation	Grant authority to use surface to explore and remove samples (only)	Grant authority to remove minerals	Grant authority to dispose of minerals	Grant authority to use land for a quarry, pit, mine	Comments
, a third party, a legal entity)					Council and a majority vote of on and off reserve electors. Community receives independent legal and professional advice.

Note: On Band Land with pre-existent Designation a 53(1)(b) permit may be issued in accordance with the terms and conditions of the Designation.

4.2. Permit/Lease Holder

The permittee/lessee is the registered legal company or the developer that will operate or contract out the operation of the pit. First Nation-owned companies can operate a pit, however the legal authority and responsibility between the First Nation and operator must be separate and distinct. The permit/lease is the contract between the company and the Crown which ensures that the interests of all First Nation members are addressed as required under the *Indian Act*.

There are several variations on how First Nations can become involved in unconsolidated non-metallic substances development. The following options are most common:

a) An agreement established by a permit/lease between Canada and a private company.
b) A First Nation-owned company ("First Nation Corporation") may be used to develop the First Nation's unconsolidated non-metallic substances under a permit or lease. This permit or lease establishes an agreement between the First Nation Corporation and Canada.
c) If the First Nation Corporation does not have the ability or capacity to conduct the operation on its own, it can enter into an agreement and subcontract out the actual mining and development work to a third party. The conditions of the permit would be binding on the First Nation Corporation or the contracted third party. This binds the First Nation Corporation or the third party engaged to do the work to ensure that the needs and obligations of community members are fully met under the permit or lease.

4.3. Issuing Permits/Leases

The issuing of an unconsolidated non-metallic substances permit/lease is a complex process that requires the input and participation of several AANDC regional staff. The lead role is bestowed to a Regional Land Management Officer. However some AANDC regions use a Natural Resources Officer in addition to a Land or Environment Officer. The Responsible Officer guides and is guided by First Nations to ensure that the intentions of the First Nations are clearly stated within the actual permit/lease issued.

AANDC regional offices issue unconsolidated non-metallic substances permits/leases at the request of First Nations and on their behalf. A Band Council Resolution is required to initiate the process.

Permits and leases must be issued in accordance with the AANDC "Operational Policy on the taking, disposition, and removal of non-metallic substances from reserves", effective November 1, 2000 (see Appendix B). Permits and leases function as a means of making an activity, which would otherwise attract penalties under s.93 of the *Indian Act* lawful.

First Nations operating under Section 53/60 of the *Indian Act*'s land management delegation of authority can approve unconsolidated non-metallic substances permits/leases.

In general terms, land/environment officers in the regional offices are responsible for:

- coordinating the administration of permits/leases issuance, including negotiating the permit/lease terms and conditions;
- providing advice and support to First Nations;
- assessing the project for compliance with federal environmental legislation and AANDC environmental considerations as it pertains to activities in mineral disposition on reserve land and ensuring permits required by other regulators are obtained;
- completing, authorizing and registering the permit/lease; and,
- monitoring for compliance with the terms and conditions of the permit/lease;

For standards related to legal survey plans requirements refer to the Indian Lands Registration Manual, 2013.

4.4. Subsection 58(4)(b) Permit

4.4.1. Authority for subsection 58(4)(b)

Subsection 58(4)(b) of the *Indian Act* states:

Notwithstanding anything in this Act the Minister may, without an absolute surrender or a designation

(b) with the consent of the council of the band, dispose of sand, gravel, clay and other non-metallic substances on or under lands in a reserve, or, where that consent cannot be obtained without undue difficulty or delay, may issue temporary permits for the taking of sand, gravel, clay and other non-metallic substances on or under lands in a reserve, renewable only with the consent of the council of the band.

A ss. 58(4)(b) permit is normally used for the disposition of small volumes, usually when the cumulative volume of all deposits are estimated to be less than 100,000 cubic metres (excluding overburden) of unconsolidated non-metallic substances. The permit can be issued without a designation.

However the "Operational policy of the taking, disposition, and removal of non-metallic substances from reserves", November 1, 2000 allows using permits for larger volumes following specific procedures. As stated within this policy First Nations that do not wish to designate their unconsolidated non-metallic minerals under ss. 53 (1) lease are able to opt for a ss.58(4)(b) permit plus a general information meeting. The policy requires that the general information meeting be convened by the Band Council and a majority of

on and off-reserve electors of the Band receive independent legal and professional advice, consent to the project.

4.4.2. Scope of Subsection 58(4)(b) Permits

The ss. 58(4)(b) permit is used when:

a) the application is to remove from a reserve unconsolidated non-metallic substances, specifically, sand, gravel, clay as fill material, earth, ash, marl, stone, fill material, top soil and peat in a volume that is agreed upon; and
b) the activity is short-term and does not include the installation of permanent structures in the permit area. (Land Management Manual standards should be considered)

A ss. 58(4)(b) cannot be issued for reserve lands which have been surrendered or designated.

4.4.3. Characteristics of a Subsection 58(4)(b) Permit

An unconsolidated non-metallic substances permit has the following characteristics:

a) it does not grant exclusive possession of the land. It grants the permittee personal rights rather than property rights. The permit must clearly indicate it neither conveys nor grants any property interests in or rights to mineral deposits on or in the affected lands but rather allows temporary personal rights for individuals or entities to extract or remove only specifically identified non-metallic substances from reserve lands. For example, "This Permit does not create any rights of tenancy or any possessory rights or exclusive rights of use and occupation by implication or otherwise";
b) it is usually granted for a short period of time;
c) it cannot be assigned nor transferred;
d) it can be cancelled at any time by the Minister upon a First Nation's request and such cancellations must contain clear reasoning and authority to do so. For example, the terms and conditions are breached;
e) it should not be granted under the pretence of a lease;
f) it does not allow for erection of permanent structures on the land;
g) royalties and surface rent fees are calculated based on fair market value in the area and are reviewable at intervals not exceeding 5 years;
h) if applicable, the project must be evaluated in accordance with CEAA 2012, and AANDC's Environmental Review Process, with relevant chapters of the AANDC Land Management Manual and AANDC related policies prior to the issuance of the permit. The permit must contain terms and conditions relevant to the scope of the project;
i) it must recite the section of the *Indian Act* under which it is granted;
j) it should recite the particular passages of the BCR which are consensual to the permit application; and

k) it should have the accompanying BCR attached as an annex.

4.4.4. The Permit Process and Key Elements of the Permit

The AANDC Minister, through his delegated authority, issues unconsolidated non-metallic substances permits with council consent once all requirements have been satisfied. If the permit holder is a company owned by a First Nation, the legal authorities and responsibilities of the First Nation are separate and distinct from the permit holder.

The terms and conditions agreed to by the First Nation, the Minister and the permit holder are described in the permit. The First Nation determines when, where and who can develop unconsolidated non-metallic substances on its reserve.

Prior to a permit being issued, a Band Council Resolution (BCR) is obtained from the First Nation authorizing the Minister to issue a permit. The BCR must clearly state key points (i.e. reserve name, Permittee, term of the permit, volume of material to be removed, royalty rate, etc. and a standard statement: "The Council has read and understand the terms and conditions of the permit, and consents to the issuance of the permit"). To proceed without BCR will render the permit void.

The permit identifies the permit holder, the affected lands, the size and configuration of the permit area, its location, and the terms and conditions under which the permit is to be issued.

A typical permit should contain clauses dealing with such issues as:

a) obligations necessary under the *Indian Act*;
b) the permit's start and end date;
c) a textual description of the land(s) involved, including a precise legal description, a legal survey plan, a textual description of the permitted area;
d) the amount, type and quality of mineral(s) involved in the disposition(s), including maximum volume that can be removed;
e) royalties to be paid to the Minister for each tonne or cubic metre removed;
f) surface rents fees and payments (if any) for the use of the land;
g) bonuses (if any) and stipulations regarding payments of fees and interest payable;
h) damage/security deposits or restoration fees;
i) developing a payment schedule to AANDC for deposit into the appropriate First Nation trust (revenue or capital) account, or to be divided between the Band and individuals in lawful possession of the land(s). The nature of the division would be described in the permit;
j) obligations in accordance with and subject to the specifications, mitigation measures and environmental protection measures described in the Environmental Review Report. Other environmental clauses may be included in the permit, including the requirement to comply with all applicable laws and AANDC policies;

k) allowing for provisions to protect the Minister and the First Nation in the event of accidents, disagreements, default and unforeseen circumstances;
l) the right of the Minister or First Nation to access the permitee's financial records relating to the project;
m) a detailed description of the reporting requirements that the permitee must adhere to as per the terms and conditions as laid out in the permit;
n) an accurate description of the project permitee's reporting scheme including volumes of minerals collected or extracted in tonnage, royalties and fees paid by dates or reporting periods;
o) a listing of any and all requirements relating to the full restoration of the land at the expiration of the term of the permit;
p) the requirement to conduct activities in compliance with all applicable federal and provincial laws, rules, regulations, notices, and orders as well as all applicable by-laws of the Band Council, Regional District, and affected municipalities;
q) indemnity and liability insurance terms and conditions;
r) monitoring and assurance of professional field review and compliance requisites; and
s) any additional provisions which may address specific issues and concerns of the First Nation.

A permit should be accompanied by several items, which include but are not limited to:

a) a legal survey plan, a textual description of the permitted area or a sketch depending on the term of the permit;
b) a detailed operation and excavation plan as well as a complete restoration scheme outlining, in detail, the activities of exploration, development, production and restoration;
c) the permit holder's proof of liability insurance;
d) the permit holder's proof of damage deposit or performance bond; and
e) an Affidavit of Execution in case that the permitee is not a corporation and does not have a corporate seal. This is a document attesting to the permit holder's signature when the permit is signed.

Stages in the issuance and implementation of a permit:

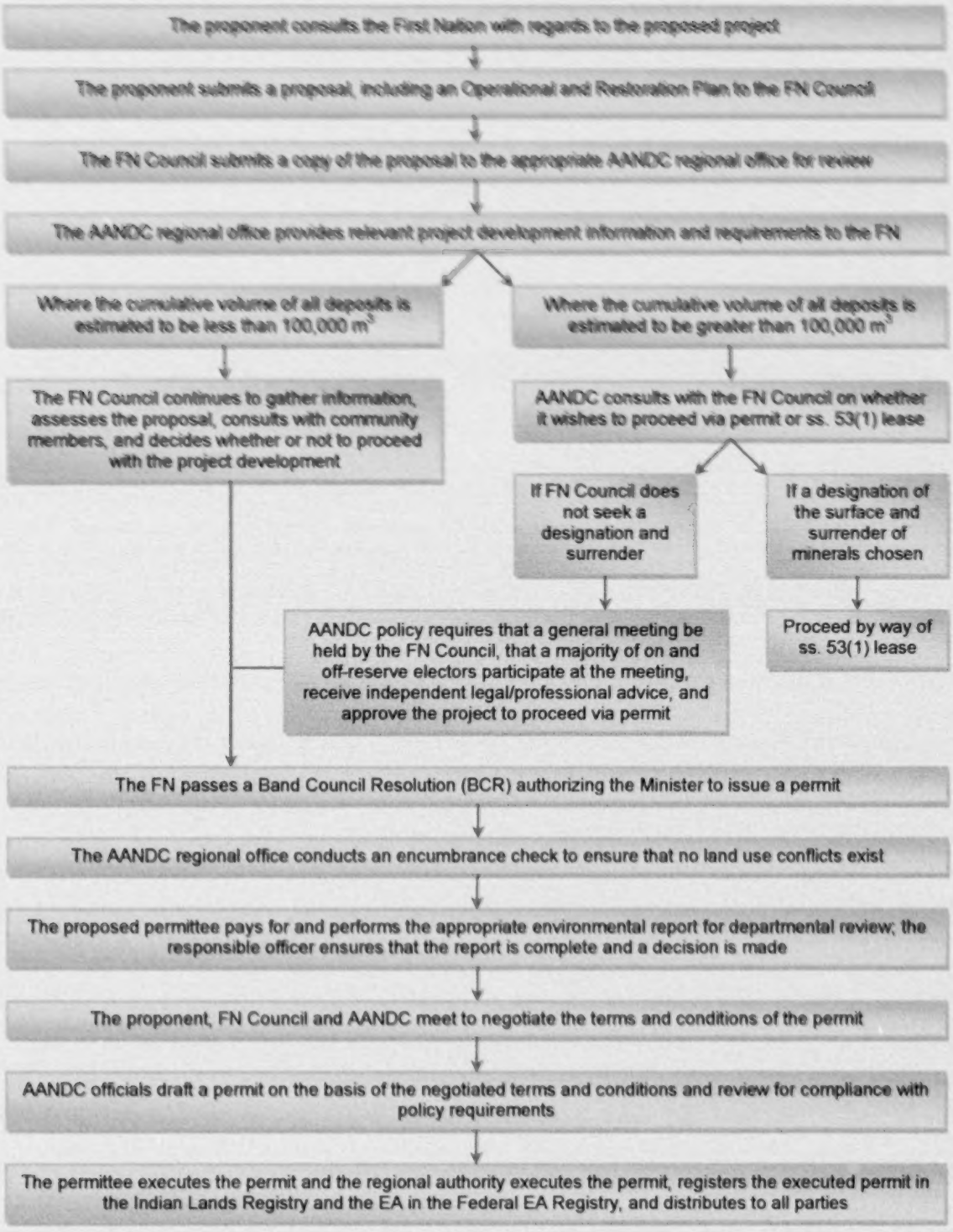
a) the proponent makes a proposal to the First Nation Council, indicating the type and volume of unconsolidated non-metallic substances required, the timetable for extraction and production and potential royalties and other details pertinent to the fair and equitable compensation of the First Nation;
b) the First Nation submits a copy of the proposal to the AANDC regional office. The Regional office verifies and screens the application and then returns it, together with suggestions and pertinent information to the First Nation;
c) the First Nation assesses the proposal and all information gathered, consults with community members and decides whether to proceed. The developer, AANDC and other experts may be asked to make a presentation to the First Nation. It is important that the First Nation has all the necessary and available information to

make a sound decision;

d) the regional officer conducts a parcel title search to ensure that there are no previous conflicting encumbrances on the subject lands. If a conflicting use exists, obtain the written consent of the prior encumbrance holder and a written recommendation from the First Nation council (i.e. BCR);
e) the First Nation passes a BCR authorizing the Minister to issue a permit;
f) Following direction from AANDC's regional Environment Unit, the proponent pays for and completes an environmental review for the project pursuant to the requirements of CEAA 2012 and departmental policies;
g) the regional environment officer must ensure that the environmental review report provided by the proponent is complete prior to making a determination on the likelihood of significant adverse environmental effects. This decision must take into consideration potential mitigation measures to address environment effects and include any applicable terms and conditions in the permit;
h) the First Nation Council, AANDC and the proponent meet to discuss and negotiate the terms and conditions of the permit, and for the sale of the unconsolidated non-metallic substances;
i) AANDC officials draft the permit;
j) the First Nation and the permitee review the draft permit for necessary terms and conditions;
k) the permittee signs the permit;
l) the AANDC regional signing authority executes the permit, registers the executed permit in the Indian Lands Registry;
m) upon registration the responsible officer provides First Nation and the permittee each with an originally executed copy of the permit and ensures an originally executed copy is archived in the AANDC regional office's file;
n) when the permit expires, or at intervals as stated in the permit, the permit holder provides statutory declarations to the Minister detailing the volume of minerals removed from the site and the royalties paid;
o) representatives of the First Nation and AANDC inspect the pit area. If conditions at the site and restoration procedures are in accordance with the terms and conditions of the permit, the permittee is released from further commitment. If however, conditions are deemed to be unsatisfactory, the Minister can withhold the security deposit until such time it is shown the permittee has met all the requirements as per the terms and conditions of the permit. Any additional costs incurred for this work shall be deemed to be the sole responsibility of the permit holder.

Graphic 1 below shows a flowchart of the permit issuing process.

Graphic 1. Subsection 58(4)(b) Permit Issuing Process


The proponent consults the First Nation with regards to the proposed project
The proponent submits a proposal, including an Operational and Restoration Plan to the FN Council
The FN Council submits a copy of the proposal to the appropriate AANDC regional office for review
The AANDC regional office provides relevant project development information and requirements to the FN
Where the cumulative volume of all deposits is estimated to be less than 100,000 m3
Where the cumulative volume of all deposits is estimated to be greater than 100,000 m3
The FN Council continues to gather information, assesses the proposal, consults with community members, and decides whether or not to proceed with the project development
AANDC consults with the FN Council on whether it wishes to proceed via permit or ss. 53(1) lease
If FN Council does not seek a designation and surrender
If a designation of the surface and surrender of minerals chosen
AANDC policy requires that a general meeting be held by the FN Council, that a majority of on and off-reserve electors participate at the meeting, receive independent legal/professional advice, and approve the project to proceed via permit
Proceed by way of ss. 53(1) lease
The FN passes a Band Council Resolution (BCR) authorizing the Minister to issue a permit
The AANDC regional office conducts an encumbrance check to ensure that no land use conflicts exist
The proposed permittee pays for and performs the appropriate environmental report for departmental review; the responsible officer ensures that the report is complete and a decision is made
The proponent, FN Council and AANDC meet to negotiate the terms and conditions of the permit
AANDC officials draft a permit on the basis of the negotiated terms and conditions and review for compliance with policy requirements
The permittee executes the permit and the regional authority executes the permit, registers the executed permit in the Indian Lands Registry and the EA in the Federal EA Registry, and distributes to all parties

4.5. Subsection 53(1) Lease

4.5.1. Authority for Subsection 53(1) Leases

Subsection 53(1) of the *Indian Act* states:

The Minister or a person appointed by the Minister for the purpose may, in accordance with this Act and the terms of the absolute surrender or designation, as the case may be,

(a) manage or sell absolutely surrendered lands; or
(b) manage, lease or carry out any other transaction affecting designated lands.

The disposition of large quantities of unconsolidated non-metallic substances from a reserve in which the cumulative volume of all deposits is estimated to be in excess of 100,000 cubic metres (excluding overburden) is recommended to be made through a ss. 53(1) lease. The removal of large volumes potentially causes a significant and permanent loss of, or diminished use of the surface of the reserve. For this reason it is necessary to designate, in accordance with the provisions of the *Indian Act*, the surface area that will be the subject of the lease, together with any access requirements. A designation means the surrender of any interest of the First Nation and its members in all or parts of the reserve land, that is not absolute, by a First Nation to Her Majesty for the purpose of land being leased or a right or interest being granted as permitted under ss. 38(2) of the *Indian Act*.

The First Nation submits a proposal to the AANDC regional office. Upon its verification and review by an Environmental Officer, any project exceeding the thresholds identified in s. 17 of the *Regulations Designating Physical Activities* under *the Canadian Environmental Assessment Act 2012* then a federal environmental assessment (EA) needs to be completed in advance of a designation.

The proponent does need rights of access and rights to the surface sufficient to conduct operations, but there must also be a transfer of an interest in the unconsolidated non-metallic substances so as to allow for its sale. In this regard, the designation vote should also address the disposition and removal of non-renewable resources, in this case the unconsolidated non-metallic substances to be extracted by the proponent.

In situations when leasing occurs on locatee land the dispositions of Directive 5-2 of the AANDC Land Management Manual should be applied.

The process for leasing of land for the purposes of extracting unconsolidated non-metallic substances should follow the Directive 7-2, Leasing Reserve Lands Using Designation, of the Lands Management Manual. Directive 7-1 Leasing Reserve Land – An Overview, Chapter 2 and Chapter 5 of the above mentioned manual may also provide guidance with regard to leasing mechanisms and designation process.
Any AANDC Officer in the process of issuing a ss. 53(1) lease who encounters uncertainties regarding procedures, or uncertainties relating to the contents of a lease,

or any other matter requiring clarification should approach the appropriate regional policy unit or to the Lands Directorate at headquarters or the Department of Justice for resolution.

4.5.2. Scope of Subsection 53(1) Leases

The ss. 53(1) lease is used when:

a) the proponent proposes to remove from a reserve unconsolidated non-metallic substances, specifically sand, gravel, clay, earth, ash, marl, stone, fill material, top soil, non-metallic placer deposits and peat in which the cumulative volume of all deposits is estimated to be in excess of 100,000 cubic metres (excluding overburden); and
b) the proponent proposes long-term use, exclusive occupation, and/or to erect permanent structures.

4.5.3. Definition of a Subsection 53(1) Lease

A "ss. 53(1) lease" grants to the lessee a property interest in unconsolidated non-metallic substances and the exclusive right to extract those substances.

4.5.4. Characteristics of a Subsection 53(1) Lease

A lease identifies the lease holder or lessee/developer, the affected lands (the size and configuration of the leased area, legal land description, survey plans, textual description), and terms and conditions in which the lease is issued.

A ss. 53(1) lease has the following characteristics:

a) it grants the lessee an exclusive possession of land (except in Quebec where it grants a personal right under the "Code Civil"), rather than solely personal rights;
b) it must clearly indicate that the lessee is entitled to exclusively occupy the land during the term of the lease and has the exclusive right to take, dispose and remove unconsolidated non-metallic minerals upon the designated lands;
c) it must recite the section of the Indian Act under which it is granted and should state that the lessee must comply with all applicable federal, provincial, or municipal laws, bylaws, rules, band bylaws, or other relevant standards;
d) it must recite the particulars of the designation, including its accepting Order in Council or Ministerial Order, which approved the lease;
e) it is usually for a long term and it must specify the lease renewal intervals and conditions;
f) it must specify and contain terms, conditions and schedules for lease rental and royalty payments and renewal intervals;
g) the royalty and surface rent fees should be based on fair market value and must be reviewable at specific intervals not exceeding 5 years;
h) it can be assigned, with the permission of the lessor, to another party;

i) it cannot be cancelled at will by the lessor (the Crown);
j) it may allow for the erection of permanent structures.
k) it must state that the lessee shall pay all applicable taxes, levies, etc., that may be payable to any authority as a result of its use and occupation of the land;
l) a clause addressing minerals other than unconsolidated non-metallic substances might have to be considered in some circumstances;
m) in case of large commercial operations, and in all cases the lease should stipulate that the lessee must agree to indemnify and save harmless the Crown against all costs and claims that arise out of the lessee's activities on the reserve. As these major proposals expose the general public to possible hazards it is mandatory to purchase public liability insurance; and
n) if leasing occurs on allotted land any agreement on the division of revenues must be in writing and signed by the locatee and the council and attached to the lease. If the First Nation does not have a policy on the division of locatee revenues, the electors present at the meeting called to approve the lease would consider the issue.
o) it must include obligations in accordance with and subject to the specifications, mitigation measures and environmental protection measures described in the Environmental Assessment/Review Report. Other environmental clauses may be included in the permit, including the requirement to comply with all applicable laws and AANDC policies.

4.5.5. The Lease Process

General steps to follow in granting a lease for the purpose of taking, disposing and removal of the non-consolidated non-metallic substances:

a) The prospective lessee presents a proposal to the First Nation Council, providing detailed specifications of the type and volumes of unconsolidated non-metallic substances needed, site development plans, operation timetable and details pertinent to potential royalties and other revenues as equitable compensation;
b) First Nation Council forwards a copy of the proposal along with an accompanying BCR to AANDC regional office and requests a lease to be granted;
c) AANDC regional office provides the First Nation Council with relevant information in the department's possession regarding leasing and designation procedures and processes;
d) AANDC regional office advises the First Nation Council to get independent legal and professional advice;
e) AANDC regional office performs a research of the Indian Lands Registry to verify the status of the land and to look for possible encumbrances. If a conflicting use exists, obtains a written consent of the encumbrance's holder and a written recommendation from the First Nation Council. The regional officer also conducts a site inspection of the land, confirms corporate status of the lessee (if required) and confirms legal description of the land;

f) The responsible AANDC environment officer ensures that relevant environmental information has been provided in order to identify the appropriate level of environmental review required;
g) the prospective lessee prepares an "Operational and Restoration Plan" and an Environmental Review Report to the satisfaction of AANDC, the First Nation and in cases where a federal EA is required, the Canadian Environmental Assessment Agency;
h) AANDC regional officer reviews the "Operational and Restoration Plan", the environmental determination recommending mitigation measures, and provides the First Nation Council with environmental information obtained in the process;
i) a security deposit should be required from the lessee to cover potential damages and can be in the form of cash, rehabilitation fee, certified cheque, money order, irrevocable letter of credit or bond. This should be calculated on the basis of the estimated overall value of the unconsolidated non-metallic substances removed from the land;
j) The responsible AANDC regional officer supports the First Nation Council in its negotiations and decisions on revenues and other terms and conditions to be contained in the lease;
k) AANDC regional officer assesses the lease, determines appropriate mechanism based on the lease term and prepares the lease document;
l) First Nation Council passes a Band Council Resolution approving the lease;
m) the lease is executed by the First Nation, the lessee and the Minister's Delegated Authority and a copy is submitted for registration in the Indian Lands Registry; Upon registration the responsible officer provides the First Nation and the lessee with an originally executed copy of the lease and ensures an originally executed copy goes into the AANDC regional office file;
n) AANDC regional officer carries out implementation responsibilities as identified in the lease; and
o) Lessee carries out mineral removal and site restoration.

4.6. Subsection 53(1)(b) Permit

As stated above in chapter 4.5.1. Authority for Subsection 53(1) Leases, section 53(1)(b) of the *Indian Act* authorizes the Minister, or a person authorized by the Minister, to manage, lease, carry out any other transactions affecting designated lands.

Permits may be subject of ss. 53(1)(b), being implicitly understood and defined as "other transactions". These types of permits are issued in situations where the disposition of non-metallic substances from reserve lands is to occur on designated lands, the minerals have not been surrendered and when the cumulative volume of all deposits is estimated to be less than 100,000 cubic metres (excluding overburden). The designation must have provisions enabling such rights and in accordance with the primary scope of the designation. The permit issuing process will basically follow the same requirements and procedure as per chapter 4.4.4. Permit Process and Key Elements of the Permit.

4.7. Allotted Land (Certificate of Possession)

The establishment of an unconsolidated non-metallic minerals operation on individual landholdings requires special consideration. In principle, there are two different ways of issuing permits and leases that are supported by the authority of two sections of the *Indian Act*, as detailed below. In determining which authorization to grant it is vital to first ascertain the extent of the physical impact on the lands and the volumes to be removed. In the situation where the disposition of the unconsolidated non-metallic minerals in which the cumulative volumes of all deposits is less than 100,000 cubic meters (excluding overburden) and is associated with a small impact on the lands, it is possible to proceed with a ss. 58(4)(b) permit.

In the situation that the disposition of the unconsolidated non-metallic minerals in which the cumulative volumes of all deposits is over 100,000 cubic metres (excluding overburden), with an extensive physical impact on the lands, then it is possible to proceed with a ss. 58(3) lease. In the event of large scale operations it is recommended that the First Nation membership be involved, and, that provided the band receives the appropriate share of the revenues generated by the operation, a designation of the minerals is not necessary. However it is, still, in the interest of the community that requiring a designation of unconsolidated non-metallic minerals made as a condition of the lease is the most prudent course of action.

Since reserve lands and often underlying minerals are ultimately held for the First Nations members as a whole, First Nations have the opportunity to express their views on the division of revenues derived from locatee lands. Revenues generated whether it is pursuant to a ss. 58(3) lease or a ss. 58(4)(b) permit must necessarily be shared between the C.P. holder and the First Nation as referenced in ss. 58(4) and ss. 58(5) of the *Indian Act* according to shares as convened by the First Nation membership. The division of revenues generated from surface rent, bonus, royalty and others is a matter for discussion between the First Nation and the locatee.

Alternatively, it is common practice that when particular reserve lands are intended to be developed to the benefit of the First Nation as a whole and those lands are held pursuant to a certificate of possession, negotiations are undertaken between the First Nation and the C.P. Holder for a transfer under sec. 24 of the *Indian Act*. In exchange for transferring his interest back to the First Nation the C.P. Holder usually receives some form of compensation (e.g. land and/or financial compensation).

5. ADMINISTRATION AND MANAGEMENT (GENERAL PROCEDURES)

The main objective of this guideline is to provide the affected First Nation with the opportunity to obtain optimal economic and socially beneficial returns as a direct result of this activity with minimal disruption to their lifestyle and environment. Therefore, when a permit or lease is issued, the following general terms and conditions related to financial aspects need to be considered. Although the *Indian Mining Regulations* do not apply, the regional officers should refer as guidance to the specific sections of these

regulations when dealing with financial aspects of permitting or leasing.

5.1. Application

In general the non-metallic minerals are subject to a fairly uniform administrative regime for all provinces/regions provided by AANDC, which allocates the non-metallic rights. The income from their extraction is collected by the federal government for the use and benefit of the First Nation.

The unconsolidated non-metallic substances are not subject to the federal-provincial mineral agreements (i.e., Natural Resources Transfer Agreements) which solely address the legal frameworks for administering the metallic minerals on reserves. However clay is identified under New-Brunswick's and Nova Scotia's agreements. Where no federal-provincial agreements exists, (i.e., Québec, Prince Edward Island and Northwest Territories) mineral title and rights need to be considered prior to any development.

First Nation initiatives towards the development of land use, planning and zoning by-laws are encouraged to optimize the opportunities for orderly resource development.

To ensure compliance with the Minister's responsibilities, the regional officer will be responsible for the necessary documentation and ensuring that any permit or lease issued is compliant in accordance with this guideline including the collection of any revenues. In addition, the responsible officer will investigate and report on all unconsolidated non-metallic substances disposals made with or without permits or leases to AANDC headquarters. There is no tender required, nor is any staking process involved.

5.2. Band Council Resolution

A BCR requesting the issuance of a permit/lease will be submitted to the delegated AANDC officer, accompanied by a copy of the offer to extract and purchase non-metallic substances from First Nation lands, prior to issuing the permit/lease. A copy of the BCR will be attached to and form part of the permit/lease.

5.3. Technical Evaluation

The proponent shall provide a geotechnical evaluation report to determine the viability and long term sustainability of unconsolidated non-metallic substances development projects on reserve land at the earliest possible stage of the process. This evaluation should be in accordance with the long term land use and resource planning in order to prevent or impede resource depletion as well as develop a mechanism to evaluate the environmental and social impacts that may result from this type of activity over a prolonged period of time. This also provides background data for more accurate assessments of potential future site development of minerals disposition on reserve land.

This evaluation will serve to inform the First Nations and their councils, as well as regional offices as to the extent of mineral resources available for commercial development and eventual sale in excess of that amount set aside for reserve use and development. Recommendations can then be made to the First Nation as to the safe commercially sustainable level of extraction at a fair royalty rate, an accurate description of the method(s) of extraction monitoring and the development of an operational and restoration plan the company will be providing.

5.4. Operational and Restoration Plan

Each application for a permit/lease for disposal of unconsolidated non-metallic substances must include an operational and restoration plan by following the Operational and Restoration Plan – Terms of Reference (see Appendix A).

Once agreed upon by the responsible officer and the proponent, the plan will be appended to the permit/lease as a schedule. The permittee's/lessee's obligations are clearly specified and criteria are established for assessing compliance with the terms of the permit/lease.

Restoration of land(s) from which unconsolidated non-metallic substances have been extracted may be considered separately from redevelopment. A particular source of substances might be used for many years and may be developed by more than one permittee/lessee over the course of the deposit's life span, though only by one party at a given time. In such cases, each permittee/lessee shall be required to use and restore the area in such a manner as to minimize the defacement of the land in accordance with the restoration plan and the potential cost of restoration for future use.

Removal of unconsolidated non-metallic substances may cause damage or defacement, physical or otherwise, to the permit/lease area and may include such things as:

- damage to land that is deemed irreparable;
- temporary damage to land that could have been corrected during its excavation;
- a complete loss of development potential of the permit area alone or as an integral part of a larger land block;
- a depreciation in the monetary value of adjoining lands, or in other terms; and/or,
- damage to ground and surface water.

Consequently, it should be noted that the occurrence of any of the points listed above will vastly depend on the methods and extent of extraction. Consideration must therefore be given to land-use plans for the permit/lease area and the surrounding lands before implementing the technical recommendations.

Removal operations should be undertaken in such ways as not to create unsafe conditions within the permit area and are the sole responsibility of the permittee/lessee. As a direct result of such responsibilities, the permittee/lessee is obliged to maintain

sufficient insurance to protect the First Nation and the Crown from any and all litigation that may be pursued by party whose property has been damaged or who suffered a personal injury by an unauthorized entry into the permit/lease area. Concurrently, the First Nation shall indicate in the BCR that it will not assume any responsibility for any damage or injury complaints suffered within the permit/lease area not covered by the permittee/lessee agreement.

The permittee/lessee will conduct operations in compliance with all provincial, industry and/or local standards unless specifically stated otherwise in the permit or lease. Permittees/lessees will accept sole responsibility and liability for any damages and inconveniences caused to surrounding land owners by any activities conducted within the permit/lease area, whether authorized or not.

5.5. Surface Rent

Surface rents are paid to Canada and placed in the First Nation's Revenue Account as compensation for the use of the land's surface area and are included in permit and/or lease agreements to cover the area required for on-reserve operations. Although no surface rent is required under the ss. 58(4)(b) of the *Indian Act* such charges can be negotiated stipulating that the proponent extracts only the identified non-metallic substances and not hold the land for other resources. All rents must be negotiated in good faith based on the most current market value of the utilized lands and the coverage area required for the operation. Surface rents are considered income and are accessible by the First Nations from their Revenue Accounts.

5.6. Royalties, Bonuses and Royalty Pre-Payments

All royalties must be negotiated and based on the current local market value and provide for future redevelopment cost. Royalties are calculated by weight or volume of unconsolidated non-metallic substances removed and sold off reserve. Royalties can be paid at various intervals and must be accompanied by a statement of account showing the amount in weight or volume of minerals removed from the reserve within the specified time period. An annual statutory declaration by the permittee/lessee showing the total amount removed in previous years is also required as royalties result from a one-time sale of a resource (capital asset). Funds are deposited into the Band's Capital Trust Account.

On rare occasions, a bonus payment or royalty pre-payment may be negotiated. These payments are at times paid to Canada for deposit to the First Nation's Revenue Account in the form of one or more lump sum payments prior to signing for a permit/lease for a large scale unconsolidated non-metallic substances development, or, on an agreed schedule.

Occasionally, it is possible for a permittee/lessee to enter into a permit/lease agreement for unconsolidated non-metallic substances extraction from a First Nation's pit and subsequently have no minerals removed. To avoid this, a clause may be inserted in the

agreement, requiring the operator to financially compensate the First Nation with a monthly or annual minimum royalty payment regardless of the amount of material removed and processed from the extraction site. The minimal royalties dispensed to the First Nation will then be deducted from the royalties paid for the actual production.

There are other ways to derive maximized benefits from a permit/lease. Frequently, a First Nation may choose to receive a volume of processed aggregate or road improvements or some other form of trade as payment in return for their unconsolidated non-metallic substances.

5.7. Security Deposits

Security deposits in the form of money, bonds or promissory notes (letters of credit, safekeeping agreements etc.) payable to the Receiver General must be provided by the permittee/lessee to ensure there is money for site conservation and reclamation. Final drafts of the letters of credit and safekeeping agreements must be approved by the Minister prior to the ratification of the permit/lease. Usually the security deposits are negotiated at a rate of 10 to 20 percent of the estimated royalties payable. Security deposits are refundable upon termination of the permit provided that the permittee/lessee has complied with all the terms and conditions of the permit. Sections 11 and 12 of the *Indian Mining Regulations* may be consulted for guidance. Regardless of the restoration method proposed, the permit/lease must contain a provision for the posting of a security deposit. This amount should be set at 10 to 20 percent of the maximum royalty expected. Security deposits shall be held by AANDC in safe custody and will be handled in accordance with the *Financial Administration Act*. These security deposits would be refundable upon evidence of satisfactory restoration of the affected lands as determined by the responsible officer in compliance with the agreement. Consequently, in the event of non-compliance with the terms and conditions of the permit/lease, the permittee/lessee would be liable, and the security deposit used to pay for works required.

5.8. Liability Insurance

The permittee/lessee must agree to indemnify and protect the Crown against all possible costs incurred from claims that may arise from the permittee's/lessee's activities on reserve. For this reason the purchase of public liability insurance needs to be made mandatory in order to protect the lessor and/or general public against any and all claims and/or litigation that may arise as a direct exposure to the benefits/risks and/or hazards stemming from proposals. As a result, this security measure is mandatory for all large scale mineral development projects.

5.9. Environmental Considerations

Prior to a project being carried out determination must be made with respect to whether the project is likely to cause significant adverse environmental effects. AANDC shall identify those effects and include specific clauses in the permit/lease terms and

conditions to ensure that all aspects related to environmental protection have been addressed.

The prospective permittee/lessee is required to submit environmental information (e.g. submission of a Project Description) to the AANDC regional office. The AANDC Environment Officer assesses and determines if the proposed project is a designated project under the *Regulations Designating Physical Activities* of the *Canadian Environmental Assessment Act 2012*. If the project exceeds the thresholds identified in s.17 of the above mentioned regulations than a federal environmental assessment (EA) needs to be completed. A description of the AANDC's environmental review process is provided in the Proponents' Guide to Aboriginal Affairs and Northern Development Canada's Environmental Review Process (August 9, 2013, draft).

Detrimental effects that may result from the disposition of unconsolidated non-metallic substances include but are not limited to:

- noise;
- dust;
- heavy traffic;
- damage to community roads from heavy trucks;
- trespassers and theft of unconsolidated non-metallic substances because of improved road access to the permit/lease area;
- risk of injury to adults and children, wildlife and livestock that may be caused by the pit operation;
- polluting of ground water and surface water during pit operations (the risk increases if refuse is allowed to be dumped into the pit);
- risk of land damage because of poor erosion control during operations;
- destruction of trees, vegetation and wildlife habitat;
- changes in land use (hunting, agriculture, etc);
- disruptions to other forms of land use (traditional land use, for example, trap lines);
- decrease in the water table and drinking water supply;
- loss of flora and/or fauna, including species at risk, due to waste, pollutants, and/or fuel storage and handling; and,
- deterioration in the attractiveness of the pit's surroundings.

Many of these complications can be avoided or their effects considerably diminished by utilising good project planning, appropriate operational procedures, and by performing proper site restoration. For instance, a fence surrounding the pit and a gate at the perimeter can considerably reduce safety hazards. Noise problems can be managed by scheduling work for particular periods of the day. A suitable after-use for the area should be identified during the early stages of planning an operation, and restoration should be aimed at preparing for that after-use.

In environmental assessments/reviews of unconsolidated non-metallic substances pits, the developer must consider the following effects of excavation of the projects on:

- ground and surface water;
- noise levels;
- erosion and stability of slopes;
- land-use conflicts;
- unique physical features;
- permafrost;
- terrestrial and aquatic wildlife and habitats;
- aesthetics of the area;
- health and safety;
- local economy, employment, quality of life;
- social aspects;
- archaeological sites; and,
- traffic from trucks and heavy equipment.

AANDC measures environmental impacts based on:

- magnitude, frequency, duration, and likelihood of the effect;
- the nature of impact (for example, direct or indirect);
- the scope of impact (for example, local or regional);
- the direction of impact (for example, positive or negative);
- cumulative or residual effects; and,
- available technology that could minimize environmental effects.

The proponent's operational and restoration plan describes the potential impact of an operation on a reserve and its surrounding lands. The operation portion of the plan details the proposed site(s) and extraction methods, including:

- stages of excavation and backfilling;
- stockpiling of topsoil;
- height of the working faces and any provisions for access (security and public safety);
- drainage;
- storage;
- dust abatement;
- noise;
- haul routes; and,
- erosion protection.

The restoration portion includes plans for:

- identifying suitable after-uses for the site;
- slope reduction;
- reapplication of topsoil;
- clean-up of the site;
- backfilling of the pit; and,
- erosion and drainage control.

The First Nation community will want to ensure that its environmental concerns are properly identified and addressed in the operational and restoration plan. AANDC, provincial departments of transportation and natural resources and many private-sector consultants may provide environmental expertise and assistance.

5.10. Monitoring and Enforcement

At stated intervals or upon permit/lease expiration, the permittee/lessee will provide a statutory declaration detailing the volume of minerals removed, royalties paid or details as set out in the permit/lease.

Inspections of the mineral project are to be conducted by representatives of the affected First Nation and AANDC personnel. If conditions of the excavation site and restoration process are not deemed to adequately satisfy the set requirements of the agreement, the permittee/lessee will be served notice of said breach of the agreement and directed to cease all operations until a resolution is provided to the satisfaction of AANDC and the affected First Nation.

If restoration of the affected lands is deemed unsatisfactory upon final inspection, the security deposit will be withheld and the permittee/lessee will be required to complete the restoration and incur any and all additional expenses. The security deposit is returned only after satisfactory restoration has been completed. Should the restoration work being not completed according to the Operational and Restoration Plan, the security deposit may be used to pay for such work.

5.11. Registration

The fully executed permit or lease including the designation document, if applicable, must be registered in the Indian Lands Registry System at the AANDC's regional office. The permit or lease must also be recorded in the department's "NetLands" system.

5.12. Aboriginal Employment Opportunities

Unconsolidated non-metallic substances development may also provide employment opportunities for First Nation members in business, management, geology, engineering and mechanical and related fields. Heavy equipment operators and drivers will also be in demand. Employment positions need to reflect the current rate being paid for off-reserve employees, and if required proper training should be provided.

6. REPORTING

Regional offices shall, upon request from Lands and Economic Development, AANDC Headquarters, report annually the quantity (by volume, in cubic metres) of unconsolidated non-metallic substances extracted and associated financial details including royalties and rental fees collected for each permit/lease active during the previous fiscal year. These data are to be collected for statistical purposes. This request will occur following the close of each fiscal year.

7. FINANCIAL DETAILS

It is the responsibility of the responsible officer to ensure that any proceeds resulting from the disposition of a non-renewable resource such as unconsolidated non-metallic substances, to the best of the officer's knowledge, are accounted for in the First Nation's Revenue and/or Capital Trust Accounts. These monies must be deposited as per the requirements of the *Financial Administration Act*.

Revenues generated as a result of the use of surface land, such as rental, are Indian monies to be credited to the First Nation Revenue Trust Account.

Revenues generated by the disposition of unconsolidated non-metallic substances such as bonuses and royalties, are Indian monies and, per section 62 of the *Indian Act*, are capital monies to be credited to the First Nation Capital Trust Account.

The permittee/lessee shall pay all taxes, levies, etc., that may be payable to any authority as a result of the use and occupation of land within a reserve.

8. CONTACT

For information on this guideline or to obtain any of the above-noted references, please contact:

Postal Address:
Aboriginal Affairs and Northern Development Canada
Lands and Environmental Management Branch
Terrasses de la Chaudière
10 Wellington, North Tower
Gatineau, Québec
(Ottawa, Ontario)
K1A 0H4

Email: InfoPubs@aadnc-aandc.gc.ca
Phone: (toll-free) 1-800-567-9604
Fax: 1-866-817-3977
TTY: (toll-free) 1-866-553-0554

For more information or direction regarding the requirements for permit or lease applications please contact the AANDC's regional offices provided on the department's website at http://www.aadnc-aandc.gc.ca/eng

APPENDIX A

OPERATIONAL AND RESTORATION PLAN
Terms of Reference

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The prospective permit/lease holder is obligated to submit to the responsible AANDC representative and the affected First Nation a detailed report of their proposed Operational and Restoration Plan outlining in detail their intended operations on the affected lands. The following outline will serve as a guide to assist in the preparation of this first requirement of the permit/lease issuance process. Address only those items which relate to your particular unconsolidated non-metallic substances pit operations. Use photographs, plans, maps and charts where possible. It is recommended that the Operational and Restoration Plan be prepared by a Registered Professional Geoscientist or Engineer.

PART A – OPERATIONAL PLAN COMPONENT

1.0 – PIT PLANNING

a) Pit status and location:
- indicate whether a new or existing pit will be used
- describe the location of the pit
- provide a legal survey plan, legal description, textual description of the permitted/leased area

b) Deposit information (append geotechnical data):
- indicate the type, quality, quantity, thickness, uniformity, etc. of the deposit material(s)
- indicate depth to water table, presence of water seepage and springs
- provide an estimate of the size and outline of the extent of the deposit
- indicate the likelihood of any zones or areas within the deposit that may not be suitable for extraction (e.g., boulders, clay pockets)

c) Quality and quantity of aggregate produced:
- indicate the type and quantity of each type of aggregate products to be produced (e.g. concrete aggregate, road base and sub-base, general fill, washed stone, etc.) and provide an estimate of reject material percentage
- estimate the volume/tonnage of aggregate material(s) to be produced on an annual, seasonal, or monthly basis
- the weight of each aggregate product to be produced is to be determined by the company and can be presented in tonnes or in density units (tonnes per cubic metre)

d) Identification of sensitive areas, which can include but are not limited to:
- archaeological sites (First Nation input required)
- survey monuments
- restricted areas (First Nation will identify areas)
- set back from water bodies, streams, etc.
- utility right of ways (e.g. natural gas, pipelines, power lines, telephone lines, etc.)

- residential areas
- churches, graveyards, etc.
- urbanized areas
- lakes, rivers, streams, fisheries, etc.
- unique flora and/or fauna
- domestic and community water supplies

e) Schedule of pit operation:
- provide an estimate of the expected life of the deposit
- indicate whether the project will operate on a year-round or seasonal basis
- designate peak hauling periods and provide information on the number, type, schedule, etc., of trucks and/or other vehicles
- provide a proposed work schedule indicating the hours and days of operation

2.0 – PIT DESIGN

a) General pit plan layout, including the location of:
- extraction/working areas
- unconsolidated non-metallic substances processing area
- mineral products storage area
- reject material storage area
- holding and settling ponds
- maintenance and office area
- weigh scale
- water usage source
- reserve boundary, set back
- topsoil and overburden storage

b) Visual screening of operation:
- indicate whether a buffer zone is necessary to prevent contamination of nearby streams or water bodies
- describe the area's natural vegetation
- indicate if berms (topsoil or overburden) are to be used to direct runoff water
- describe visual screen fencing

c) Site access and transportation haul roads:
- indicate if new or existing roads are to be used
- state whether the roads are Band-owned and maintained or provincial (leased)
- indicate who is responsible for road maintenance
- describe entrance and exit locations
- address public safety concerns (e.g. speed restrictions, traffic signs, etc.)
- note weight restrictions and any specific restriction periods
- indicate stream crossings (e.g. culverts, bridges, etc.)

d) Groundwater and surface water management:

- provide an estimate of the volume of water required for the project
- indicate the type of source to be used (e.g. surface, well, etc.)
- provide a plan for discharge (e.g. establishment of settling ponds, recycling of water, etc.)

e) Security/safety concerns:

- delineate the location of pit perimeter fencing
- address potential need for danger warning signs (e.g. steep slopes, dangerous equipment, etc.)
- propose methods of theft and vandalism prevention

3.0 – PIT OPERATION

a) Site preparation:

- estimate the area to be cleared in acres or hectares
- indicate brush clearing/slash removal method (e.g. burning, windrow)
- provide a plan for the removal and storage of top soil/overburden

b) Method of excavation:

- indicate the depth of pit and slope of pit walls (3H:1V)
- propose a plan detailing excavation method (drilling, blasting, dredging, etc.), sequence of operation, and plan of extraction
- describe the type of equipment used in as well as provide a description of the screening and crushing operation

c) Drainage and erosion control

d) Dust, noise and light control

e) Maintenance yard concerns:

- indicate plans for equipment storage and maintenance, oil disposal, and proper fuel storage (e.g. underground storage tanks) to prevent leaks and spills

f) Equipment in pit:

- describe the types of equipment to be used (e.g. loaders, etc.)
- describe the types of processing plants to be involved (e.g. asphalt, screening, crushing, etc.)

g) Security/Safety concerns:

- the formation of a Safety Committee
- restricted access to the site during operations to personnel who have received hazard awareness training for the site

- consult the federal and provincial Occupational Health and Safety acts, regulations and guidelines
- consult the federal and provincial Workers Compensation acts, regulations and guidelines
- consider and respect Operation and Maintenance Manuals rules for all equipment utilized

PART B – RESTORATION PLAN COMPONENT

The proponent is obligated to restore and beautify reserve lands disturbed by mining development. The restoration plan component presents a detailed description of how the company will meet this obligation. The proponent must address all potential or anticipated environmental implications that may arise from excavation activities on reserve land as well as indicate the remedial measures it intends to implement to lessen or correct the impact on these lands.

1.0 – ENVIRONMENTAL REGULATIONS

a) abide by all Federal, Provincial and Municipal environment regulations relating to:
- fisheries
- mining regulations
- waste management
- other

b) obtain, as necessary all regulatory approvals relating to:
- fisheries
- environment
- other (e.g. see Appendix C)

c) follow the procedures outlined in the "Proponents Guide to Aboriginal Affairs and Northern Development Canada's Environmental Review Process.

2.0 – SITE RESTORATION

a) Progressive reclamation and/or restoration strategy:
- propose a strategy on both a day to day and seasonal basis

b) Final reclamation and/or restoration strategy:

i) Methods of restoration
- describe equipment used and other relevant information

ii) Clean up/removal of:
- stockpiled or processed aggregate
- rejected material or tailings

- garbage and debris
- buildings
- machinery and equipment

iii) Drainage and erosion control:
- provide details on both a temporary and a final/post-development basis

iv) Recontouring:
- describe the reshaping of pit, including final sloping of abandoned pit, working faces (3H:1V minimum), and temporary sloping of working pit face (3H:1V)

v) Topsoil and overburden replacement

vi) Revegetation:
- indicate whether this will be accomplished naturally or through seeding and/or tree planting

3.0 – MONITORING AND MAINTENANCE

- provide a long term monitoring plan including a suggested timetable

Upon completion of the agreement a site inspection will be performed and if the restoration and/or site conditions are deemed unacceptable, the operator will be required to provide corrective action to remedy the situation.

PART C – ABORIGINAL ECONOMIC OPPORTUNITIES

a) Identification of employment opportunities, including:
- type and number of jobs to be created, indicating those available to Band members vs. non-Aboriginals
- skill development
- gross salaries to be paid

b) Identification of business opportunities, including:
- type of service contracts available

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APPENDIX B

AANDC OPERATIONAL POLICY FOR NON-METALLIC SUBSTANCES

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1.0 Purpose

1.1 To establish a revised departmental operational policy (the "policy") on the taking of non-metallic substances from land in a reserve, the disposition of these substances and their removal from a reserve.

2.0 Scope

The policy outlined in this directive is applicable to regional staff responsible for carrying out functions of Lands and Trust Services.

3.0 References

Indian Act

- Section 2 (definition of "reserve")
- Subsection 53(1)
- Subsection 58(4)(b)
- Section 93

Indian Mining Regulations

- Section 2(1) (definition of "minerals")
- Subsection 5(2)
- Subsection 6(1)

Indian Oil and Gas Act

- Section 2 (definition of "oil" and "gas")

1.0 Objet

1.1 Établir une politique opérationnelle ministérielle révisée (la "politique") sur la prise de substances non métalliques sur les terres d'une réserve, l'aliénation de ces substances et leur transport hors de la réserve où elles ont été prises.

2.0 Portée

La politique décrite dans la présente directive s'applique au personnel regional des Services fonciers et fiduciaires.

3.0 Références

Loi sur les Indiens

- Article 2 (définition de "réserve")
- Paragraphe 53(1)
- Alinéa 58(4)b)
- Article 93

Règlement sur l'exploitation minière dans les réserves indiennes

- Paragraphe 2(1) (définition de "minéraux")
- Paragraphe 5(2)
- Paragraphe 6(1)

Loi sur le pétrole et le gaz des terres indiennes

- Article 2 (définition de "pétrole" et "gaz")

4.0 Issuing Authority

The policy directive is issued under the authority of the Assistant Deputy Minister, Lands and Trust Services.

4.0 Autorité compétente

La présente directive d'orientation est publiée avec l'autorisation du sous-ministre adjoint, Services fonciers et fiduciaires.

5.0 Definition

"Non-metallic substances" include sand, gravel, clay, earth, ash, marl, peat, limestone, gypsum, granite, diamond, coal, placer deposits of non-metallic minerals, hydrocarbons not produced from a well in liquid form, and other non-metallic substances, but do not include (1) "oil" and "gas" as defined in the *Indian Oil and Gas Act*, and (2) naturally occurring metallic substances and rock containing those substances.

A "subsection 58(4)(b) permit" is a written document issued under authority of subsection 58(4)(b) of the *Indian Act* and which authorizes a person, including a corporation or other legal entity, to (1) take non-metallic substances from land in a reserve and dispose of these substances, and (2) acquire a non-exclusive interest in land in a reserve necessarily incidental to the taking of non-metallic substances from land in a reserve.

5.0 Définition

Les "substances non métalliques" comprennent le sable, le gravier, l'argile, la terre, les cendres, la marne, la tourbe, le calcaire, le gypse, le granite, le diamant, le charbon, les placers composés de minéraux non métalliques, les hydrocarbures non produits à partir d'un puits sous forme liquide, et les autres substances non métalliques, mais n'incluent pas 1) le « pétrole » et le « gaz », tels que définis dans la *Loi sur le pétrole et le gaz des terres indiennes*, ni 2) les substances métalliques à l'état naturel et la roche contenant ces substances.

Un "permis de l'alinéa 58(4)(b)" est un document écrit qui est délivré aux termes de l'alinéa 58(4)(b) de la *Loi sur les Indiens* et qui autorise une personne, y compris une corporation ou autre entité légale, à 1) prendre des substances non métalliques sur les terres d'une réserve et d'en disposer, et à 2) acquérir un intérêt non exclusif sur les terres d'une réserve directement lié à la prise de substances non métalliques sur les terres d'une réserve.

A "subsection 58(4)(b) permit" cannot be issued where (1) lands have been designated, since "subsection 58(4)(b) permits" can be issued only on reserve lands, which are defined in the *Indian Act* to not include designated lands for the purposes of section 58 of the *Indian Act*, or (2) where the minerals have been surrendered.

Un « permis de l'alinéa 58(4)b) » ne peut pas être délivré 1) lorsque les terres ont été désignées, puisque les « permis de l'alinéa 58(4)b) » peuvent être délivrés seulement sur les terres de réserve, qui sont définies dans la *Loi sur les Indiens* comme n'incluant pas de terres désignées aux fins de l'article 58 de la *Loi sur les Indiens*, ou 2) lorsque les minéraux ont été cédés.

6.0 Management Policy

6.0 Politique de gestion

6.1 Policy Statement

6.1 Énoncé de politique

A "subsection 58(4)(b) permit" cannot be issued for reserve lands which have been surrendered or designated.

Un "permis de l'alinéa 58(4)b)" ne peut pas être délivré pour des terres de réserve qui ont été cédées ou désignées.

Where a person seeks to take non-metallic substances from an Indian Reserve in which the cumulative volume of all deposits is estimated to be less than 100,000 cubic metres (excluding overburden), the Department of Indian Affairs and Northern Development (DIAND) may issue a "subsection 58(4)(b) permit" with the consent of the Band Council.

Lorsqu'une personne désire prendre des substances non métalliques d'une réserve indienne dans laquelle le volume cumulatif de tous les dépôts est inférieur à 100 000 mètres cubes (excluant le mort-terrain), le Ministère des Affaires indiennes et du Nord Canda (MAINC) peut délivrer un "permis de l'alinéa 58(4)b)", avec le consentement du conseil de bande.

Where a person seeks to take non-metallic substances from an Indian Reserve in which the cumulative volume of all deposits is estimated to be in excess of 100,000 cubic metres (excluding overburden) thereby potentially causing a significant and permanent loss of, or diminished

Lorsqu'une personne désire prendre des substances non métalliques d'une réserve indienne dans laquelle le volume cumulatif de tous les dépôts est estimé être supérieur à 100 000 mètres cubes (excluant le mort-terrain), pouvant ainsi causer une perte importante et permanente de la

use of the surface of the reserve, DIAND will consult with the Band Council whether it wishes to proceed through a "subsection 58(4)(b) permit" or through a designation of the surface and a surrender of the minerals.

Where the Band Council chooses to proceed by way of a "subsection 58(4)(b) permit", DIAND may issue a "subsection 58(4)(b) permit" where (1) the Band Council and (2) the majority of on and off reserve electors of the First Nation at a general meeting of the Band convened by the Band Council have received independent legal and professional advice and have consented to the project.

At the general meeting the electors shall be informed about:

- the nature, scope and estimated value of the transactions;
- any loss of, or diminished use of, the surface of a reserve which may be caused by the taking of non-metallic substances from the reserve; and
- environmental impacts related to the non-metallic substances from the reserve.

superficie d'une réserve, ou en diminuer l'utilisation, le MAINC consultera le conseil de bande pour savoir si ce dernier désire opérer sous un "permis de l'alinéa 58(4)(b)" ou au travers d'une désignation de la surface et d'une cession des substances minérales.

Lorsque le conseil de bande désire procéder selon un "permis de l'alinéa 58(4)(b)", le MAINC peut délivrer un tel permis lorsque 1) le conseil de bande et 2) la majorité des électeurs de la Première nation résidants sur la réserve ou à l'extérieur ont été convoqués à une assemblée générale par le conseil de bande, y ont reçu des conseils professionels et légaux indépendants et ont approuvé le projet.

Lors de l'assemblée générale, les électeurs doivent être informés :

- de la nature, de la portée et de la valeur estimative des transactions;
- de toute perte ou diminution d'usage de la surface d'une réserve qui peut être causée par la prise de substances non métalliques de la réserve;
- des incidences environnementales liées aux substances non métalliques de la réserve.

Non-resident electors shall be advised about the date, time, location, and purpose of the general meeting, and shall be allowed to express their views about the project in accordance with DIAND policy respecting non-resident voters and their eligibility to participate and vote at such meetings.

Les électeurs non résidants doivent être avisés de la date, de l'heure, de l'endroit et du but de l'assemblée générale, et on doit leur permettre d'exprimer leurs vues au sujet du projet, conformément à la politique du MAINC concernant les voteurs non résidants et leur admissibilité à participer et à voter lors de ces assemblées.

If the Band Council refuses to convene a general meeting, DIAND will consider the Band Council's reasons for not convening a general meeting. If DIAND considers the reasons valid, it will issue a "subsection 58(4)(b) permit" if it has obtained a release from the Band Council developed with independent legal advice that it will not hold the federal government liable at law for the issuance of a "subsection 58(4)(b) permit". Without such a release, DIAND officials shall not issue a "subsection 58(4)(b) permit". The inconvenience and cost of holding a general meeting is not a valid reason for not holding a general meeting to ascertain the views of Band membership of the proposal.

Si le conseil de bande refuse de convoquer une assemblée générale, le MAINC considèrera les raisons invoquées par le conseil de bande à cet effet. Si le MAINC considère que les raisons sont valides, le Ministère émettra un permis selon l'alinéa 58(4)(b) s'il a obtenu du conseil de bande une exemption élaborée avec des conseils légaux et à l'effet que le conseil ne tiendra pas le gouvernement fédéral responsable devant la loi de la délivrance d'un « permis de l'alinéa 58(4)(b) ». Sans une telle exemption, les représentants du MAINC ne doivent pas délivrer de "permis de l'alinéa 58(4)(b)". Les inconvénients et le coût encourus pour une assemblée générale ne sont pas des raisons suffisantes pour ne pas tenir une telle réunion qui a pour but d'obtenir l'opinion des membres de la bande concernant la proposition.

"Subsection 58(4)(b) permits" may authorize the permit holder to acquire non-exclusive interests in a reserve necessarily incidental to the taking of non-metallic substances. DIAND

Les "permis de l'alinéa 58(4)(b)" peuvent autoriser le titulaire de permis à acquérir un intérêt non exclusif sur une réserve directement lié à la prise de substances non métalliques sur ces

recognizes the importance of restricting access to these lands to protect the heath and safety of the residents. It also recognizes the permittee's need for security of buildings, equipment and inventory of non-metallic minerals and the need to conduct his/her business in an efficient manner. DIAND will only grant other nonexclusive interests in the land that are compatible with these concerns (e.g. supervised industrial or educational tours, etc.). Where the intent is to grant a permit holder a non-exclusive interest in a reserve, that interest shall be explicitly granted in the "subsection 58(4)(b) permit" and the terms and conditions of the grant of the interest shall be specified.

terres. Le MAINC reconnait l'importance de restreindre l'accès à ces terres afin de protéger la santé et la sécurité des résidents. Le ministère reconnait aussi que le détenteur de permis a besoin de sûreté concernant les batiments, l'équipement et les substances non métalliques et pour mener ses affaires d'une façon efficace. Le MAINC ne concèdera donc que des intérêts non exclusifs compatibles avec ces préoccupations (c.-à-d. tours industriels supervisés ou éducatifs, etc.) Lorsqu'on a l'intention d'accorder à un titulaire de permis un intérêt non exclusif dans une réserve, cet intérêt doit être explicitement accordé dans le "permis de l'alinéa 58(4)(b)" et le mandat de la délivrance de l'intérêt doit être précisé.

Where the taking of non-metallic substances from lands in a reserve is to occur on designated lands, the designation shall make provision for the taking of non-metallic substances from the designated lands and for their disposition.

Lorsque la prise de substances non métalliques sur les terres d'une réserve doit se faire sur des terres désignées, la désignation doit prévoir la prise de substances non métalliques sur des terres désignées ainsi que leur aliénation.

Where the taking of non-metallic substances is to occur on lands where the minerals have been surrendered and the federal government has jurisdiction over the surrendered minerals, two situations may arise:

Lorsque la prise de substances non métalliques doit se faire sur des terres où les minéraux ont été cédés et que le gouvernement fédéral a compétence sur les minéraux cédés, il peut se produire deux situations :

- Where the *Indian Mining Regulations* apply (i.e. all provinces and territories except British Columbia), and where the non-metallic substances fall

- Lorsque le *Règlement sur l'exploitation minière dans les réserves indiennes* s'applique (c.-à-d. toutes les provinces et tous les territoires, sauf la Colombie-

within the meaning of "minerals" in the *Indian Mining Regulations*, the disposition of these substances shall occur through a lease or permit issued under subsections 5(2) or 6(1) of the *Indian Mining Regulations*.

- Where either the *Indian Mining Regulations* do not apply (i.e. the province of British Columbia) or the non-metallic substances do not fall within the definition of ¨minerals¨ in the *Indian Mining Regulations* (e.g. unconsolidated minerals), the disposition of these substances shall occur through an instrument issued under Section 53 of the *Indian Act*.

Where an instrument issued under subsections 58(4)(b) or 53(1) of the *Indian Act* or subsections 5(2) or 6(1) of the *Indian Mining Regulations* authorizes the taking and disposition of non-metallic substances from a reserve, the instrument should include explicit authorization to the instrument holder

Britannique), et lorsque les substances non métalliques entrent dans la définition de « minéraux » du *Règlement sur l'exploitation minière dans les réserves indiennes*, l'aliénation de ces substances doit se faire par le biais d'un bail ou d'un permis délivré aux termes des paragraphes 5(2) ou 6(1) du *Règlement sur l'exploitation minière dans les réserves indiennes*.

- Lorsque, soit le *Règlement sur l'exploitation minière dans les réserves indiennes* ne s'applique pas (c.-à-d. la province de la Colombie-Britannique), soit les substances non métalliques n'entrent pas dans la définition de « minéraux » du *Règlement sur l'exploitation minière dans les réserves indiennes* (p. ex. minéraux non consolidés), l'aliénation de ces substances doitse faire par le biais d'un instrument délivré aux termes de l'article 53 de la *Loi sur les Indiens*.

Lorsqu'un instrument délivré aux termes de l'alinéa 58(4)(b) ou du paragraphe 53(1) de la *Loi sur les Indiens* ou des paragraphes 5(2) ou 6(1) du *Règlement sur l'exploitation minière dans les réserves indiennes* autorise la prise et l'aliénation de substances métalliques dans une réserve, l'instrument doit

and persons acting for or on behalf of the instrument holder, to remove those substances from the reserve from which they were taken. This allows the instrument holder, and the holder's contractors and employees, to remove the non-metallic substances from the reserve without committing an offence under section 93 of the *Indian Act*.

inclure une autorisation explicite à l'effet que le titulaire et les personnes agissant au nom du titulaire de l'instrument doivent enlever ces substances de la réserve où elles ont été prises. Cela permet au titulaire de l'instrument et à ses entrepreneurs et employés d'enlever les substances non métalliques de la réserve sans enfreindre l'article 93 de la *Loi sur les Indiens*.

6.2 Policy Objective

To provide guidance and direction to regional staff dealing with requests concerning the taking, disposition and removal of non-metallic substances from reserves.

6.2 Objectif de la politique

De fournir des instructions et des directives aux employés des régions qui sont appelés à traiter les demandes concernant la prise, l'aliénation et l'enlèvement de substances non métalliques sur les réserves.

6.3 Policy Requirements

Regional Director, Lands and Trust Services or those responsible for administering the taking, disposal and removal of non-metallic substances from reserves, may implement and enforce this policy starting November 1, 2000, in consultation with First Nations wishing to be governed by the provisions set out herein.

6.3 Exigences de la politique

Les directeurs régionaux des Services fonciers et fiduciaires ou les responsables de l'administration de la prise, de l'aliénation et de l'enlèvement de substances non métalliques sur les réserves peuvent mettrent en oeuvre et appliquer cette politique à partir du 1 novembre 2000, en consulation avec les Premères nations qui désirent être régies par les dispositions ci-incluses.

7.0 Enquiries

Enquiries regarding this policy may be addressed to the Director, Environment and Natural Resources, Lands and Trust
Services, Headquarters. Prepared by:

Environment and Natural Resources Directorate
Lands and Environment Branch
Lands and Trust Services

7.0 Demandes de renseignements

Les demandes de renseignements concernant la présente politique peuvent être adressées au directeur de l'Environnement et des ressources naturelles, Services fonciers et fiduciaires, Administration centrale. Établi par :

Direction de l'Environnement et des ressources naturelles
Direction générale des Terres et de l'environnement
Services fonciers et fiduciaires

A/Assistant Deputy Minister
Lands and Trust Services

Warren Johnson
Sous-ministre adjoint int.
Services fonciers et fiduciaires

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APPENDIX C

RELEVANT LEGISLATION AND POLICY

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The following Acts, Regulations, Policies, etc., available online via the Department of Justice (http://laws-lois.justice.gc.ca) or on the applicable Ministry/Department's website, may be relevant to unconsolidated non-metallic substances development projects:

- *Indian Act* and Regulations;
- *Indian Mining Regulations*;
- *Indian Timber Regulations*;
- *Indian Timber Harvesting Regulations*;
- *Canadian Environmental Assessment Act, 2012* and its Regulations (e.g., *Regulations Designating Physical Activities*);
- *Canadian Environmental Protection Act* and its Guidelines and Regulations;
- *Canada Wildlife Act*;
- *Fisheries Act*;
- *Migratory Birds Convention Act*;
- *National Energy Board Act*;
- National Building Code;
- National Fire Code;
- *Navigable Waters Protection Act*;
- *Pest Control Products Act*;
- *Species at Risk Act*;
- *Transportation of Dangerous Goods Act*;
- *Indian Reserve Waste Disposal Regulations*;
- *Storage Tank for Petroleum and Allied Petroleum Products Regulations*, 2008; and
- *Safe Drinking Water for First Nations Act* and any Regulations that may be passed under that *Act*.

Acknowledging the contribution of the following departmental resources to the writing of this document:

- An Overview of Resource Development: Sand and Gravel, 1993;
- Land Management Manual, 2008;
- Indian Lands Registration Manual, July 2013
- Proponents Guide to Aboriginal Affairs and Northern Development Canada's Environmental Review Process (August 9, 2013, Draft)
- NWT Mining-Related & Environmental Management Glossary, 2007
- Locatee Lease Policy and Directive
- Operational Policy on Proceeds from Minerals Sales for Indian Money Purposes
- Manual for the Administration of Band Money
- Compliance and Enforcement Policy for the *Canadian Environmental Protection Act*, 1999;
- Indian and Inuit Affairs Program, Environment Policy, 2003;

- INAC Contaminated Sites Management Policy, 2002;
- INAC Departmental Directive 20.1 - Responding to the Enforcement of Environmental Protection Legislation, 1992;

APPENDIX D

GLOSSARY

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aggregate: a mass of rock particles, mineral grains or a mixture of both.

Band: as defined in the *Indian Act*.

Band Council Resolution (BCR): a document which contains a resolution made by a First Nation Council at a duly convened First Nation council meeting which has been discussed, voted on, and passed by a quorum of council.

berm: a mound or wall, usually of earth, used to prevent substances from entering an area.

Certificate of Possession (CP): a document issued under s. 20(2) of the *Indian Act* proving the right of a First Nation member to use and occupy specified reserve lands.

consolidated non-metallic substances: materials that have been metamorphosed or cemented together, like limestone and sandstone. Groundwater flows through fracture networks in these consolidated sediments. This definition includes potash.

designation: the conditional or unconditional surrender that is not absolute by a First Nation to Her Majesty of any right or interest of the First Nation and its members in all or part of a reserve, for the purpose of the reserve land being leased or a right of interest therein being granted as permitted under subsection 38(2) of the *Indian Act*, subsection 12.(2) of the *Manitoba Claim Settlements Implementation Act* and subsection 6.(2) of the *Claim Settlements (Alberta and Saskatchewan) Implementation Act*.

disposition: the exploration, extraction or mining of minerals from reserve lands and commission of them to some other use.

encumbrance: any existing registered instrument on the parcel that may or may not conflict with the proposed permit/lease.

environmental assessment: means an assessment of the environmental effects of a designated project, as defined by the *Regulations Designating Physical Activities* that is conducted in accordance with the *Canadian Environmental Assessment Act, 2012*.

environmental review: an assessment of the environmental effects of a non-designated project that is conducted in accordance with the department's environmental review policies, directives and guides.

instrument: a formal legal document.

lease: an instrument that authorizes the disposition of unconsolidated non-metallic substances granting exclusive use of land during a specified period in exchange for a benefit.

lessee: the holder of a lease.

lessor: means Her Majesty the Queen in right of Canada, as represented by the Minister of Indian Affairs and Northern Development.

locatee: means a Band member in lawful possession of lands that, with the approval of the Minister, has been transferred to him or her in accordance with the *Indian Act*. Also known as a CP Holder.

marl: a term loosely applied to a variety of materials, most of which occur as loose, earthy deposits consisting mainly of a mixture of clay and calcium carbonate. Usually gray, marl can be used as a fertilizer for acid soils deficient in lime.

mitigation measures: measures for the elimination, reduction or control of the adverse environmental effects of a designated project, and includes restitution for any damage to the environment caused by those effects through replacement, restoration, compensation or any other means.

monitoring: the observance of compliance with the permit/lease document.

Operational and Restoration Plan: a plan that describes the operational procedures for taking, removing, and disposing of unconsolidated non-metallic substances, their potential impact on the environment, reserve and its surrounding lands indicating remedial measures that the company intends to implement.

overburden: material of any nature, including loose soil, sand and gravel, that lies above bedrock or a deposit.

permit: an instrument that authorizes the disposition of unconsolidated non-metallic substances and grants non-exclusive possession rights to the land.

permittee: the holder of a permit.

pit: a site where granular material, not including consolidated rock, is being or has been taken.

processing: the screening, blasting, crushing, draining or any other preparation of excavated material before stockpiling or removal.

proponent: in terms of unconsolidated non-metallic substances activity, the proponent will explore, obtain regulatory approvals and the right to extract and sell the resource, finance the project, comply with federal environmental legislation, develop and operate the pit or quarry, find markets, and rehabilitate the site. Also known as the project developer.

recontouring: the process of reshaping a disturbed land surface to fit the form of the surrounding land.

restoration: the renewing, repairing, cleaning-up, remediation or other management of soil, groundwater or sediment so that its functions and qualities are comparable to those of its original, unaltered state.

revegetation: the replacing of original ground cover following a disturbance to the land.

royalties: usage-based payments made by one party (the "permittee") to another (the "permittor") for the right to ongoing use of an asset, usually expressed as a percentage of the production sold.

unconsolidated non-metallic substances: sediments ranging from clay to sand to gravel, with connected pore spaces that allow groundwater to be stored and transported. This definition mainly includes sand, gravel, clay, earth, ash, marl, stone, fill material, top soil, non-metallic placer deposits and peat.